

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

United States of America,)
vs. Plaintiff,) No. 09-0359-01-CR-W-FJG
Richard Allan Herring,)
Defendant.)

ORDER

On December 9, 2009, counsel for defendant filed a motion for determination of competency (Doc. #9). This motion was granted on December 14, 2009, by order of United States Magistrate Judge John T. Maughmer (Doc. # 14). A psychiatric evaluation was prepared by William S. Logan, M.D. (Doc. #18). It is the opinion of Dr. Logan that defendant has the ability to understand the nature and consequences of the proceedings against him but is unable to assist counsel in his own defense. At the competency hearing before Judge Maughmer on February 5, 2010, counsel stipulated to Dr. Logan's opinion concerning defendant's competency (Doc. #17).

United States Magistrate Judge John T. Maughmer entered an Amended Report and Recommendation (Doc. #20) on February 12, 2010, which recommended that the District Court find defendant incompetent to properly assist in his own defense. He further recommended that defendant be committed to the custody of the Attorney General for hospitalization and treatment in a suitable facility for a reasonable time up to 120 days to determine whether there is a substantial probability that in the foreseeable future, defendant will attain the capacity to permit the trial of this matter to proceed. No objections to Judge Maughmer's Amended Report and Recommendation were filed. On March 31, 2010, Judge Maughmer entered a Second Amended Report and Recommendation solely for the purpose of correcting the spelling of defendant's middle name. Therefore, with no objections having been filed and after making an independent review of the record, it is

ORDERED that the Second Amended Report and Recommendation of United States Magistrate Judge John T. Maughmer (Doc. #23) is adopted in its entirety. This Court finds that defendant is incompetent to properly assist counsel in his own defense.

IT IS FURTHER ORDERED that defendant be committed to the custody of the Attorney General for hospitalization and treatment in a suitable facility for a reasonable time up to 120 days to determine whether there is a substantial probability that in the foreseeable future, defendant will attain the capacity to permit the trial of this matter to proceed.

/s/Fernando J. Gaitan, Jr.

Fernando J. Gaitan, Jr.
Chief United States District Judge

Dated: 03/31/10
Kansas City, Missouri